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The Honorable Vince Chhabria
United States District Court, Northern District of California
450 Golden Gate Avenue, Courtroom 4
San Francisco, CA 94102

Re: Application of John Yanchunis for Lead Counsel in MDL No. 2843

Dear Judge Chhabria:

Pursuant to the Court's June 7, 2018, Pretrial Order No. 1, I respectfully submit this application for appointment as Plaintiffs' Lead Counsel of MDL 2843: *In re Facebook, Inc., Consumer Privacy User Profile Litigation*.

It is imperative that the leadership of this litigation recognizes that this case is not a "typical" data breach case involving unauthorized access and exfiltration of information. This case does not present completely novel issues, as nearly 20 years ago I was involved in class litigation in which users' private activities on the internet were being tracked; however, this case will require a fresh approach far different than payment card breaches that have been so prevalent in the last several years. While standard privacy issues that arise in the data breach context will naturally apply to this case, the invasion of privacy rights through use of a social media platform presents dimensions and challenges which must be addressed with an innovative perspective. Recognizing this key component of this MDL, once I was first contacted by potential plaintiffs, I engaged two experts to guide me through the nuances of this case—a strategy that will be crucial throughout the course of this litigation. Not only are the technical aspects of the violations of privacy interests different, Plaintiffs' counsel will need also to look beyond the data breach norms and potentially draw from other areas of litigation to tailor theories, causes of action, discovery, and trial methods to the distinctive issues presented in this case. My depth of experience and knowledge in privacy litigation—far beyond payment card breaches—makes me uniquely qualified to lead this MDL and forge through the new ground that lies ahead.

1.   <u>Professional Experience with MDLs and with the Subject Matter of this Litigation</u>

I lead the National Consumer Class Action section of Morgan & Morgan's Complex Litigation Group (the "Group"). I have concentrated on complex litigation during my 36 years practicing law, including consumer class actions for approximately two-thirds of my practice. My work in the area of privacy litigation began in 1999 with the filing of *In re Doubleclick Inc. Privacy Litigation*, 154 F. Supp. 497 (S.D.N.Y. 2001), alleging privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, I served as co-lead counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights arising from the misuse of information of more than 200 million consumers under the Driver's Protection Privacy Act. The defendants at the time included many of the nation's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier

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(which owns Lexis/Nexis). *Fresco v. Auto. Directions, Inc.*, No. 03-cv-61063-JEM (S.D. Fla.), and *Fresco v. R.L. Polk,* No. 07-cv-60695-JEM (S.D. Fla.).

In the last several years my practice has focused almost exclusively on privacy class litigation. While the attached resume provides greater detail of my leadership roles in the successful prosecution of a number of privacy cases, recent MDL cases in which I have served in leadership include: *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-md-02752-LHK (N.D. Cal.) (lead counsel in a data breach case implicating the privacy of nearly three billion users); *In re Equifax, Inc. Customer Data Sec. Breach Litig.*, 1:17-md-02800 (N.D. Ga.) (Plaintiffs' Steering Committee in data breach case impacting 145.5 million people); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (member of the Executive Committee overseeing the consumer class, financial institution class, and shareholder derivative litigation); and *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (co-lead counsel for case in which resulted in a $19.5 million common fund settlement). Since 2016, this Court has had an opportunity to oversee my leadership in the prosecution of *Walters v. Kimpton Hotel & Rest. Grp., LLC*, No. 3:16-cv-5387-VC (N.D. Cal.) (lead counsel in a data breach in which preliminary approval of class action settlement is pending before this Court). Because of my long-standing and notable work in this area, in 2016 the National Law Journal selected me as a Trailblazer in the Area of Cybersecurity & Data Privacy.

2.   Familiarity with the Claims before the Court

I filed the first complaint in this action, as a committed privacy advocate. Prior to the filing of the case and continuing to this date, I have been investigating the manner and method by which Facebook and other potential defendants have misused and violated consumers' privacy rights. These efforts have included retaining well-respected cyber experts and dispatching two of my Group's investigators to conduct witness interviews and gather facts. The investigators are retired FBI agents, including one who led the FBI's investigation of Enron during his years of service. These efforts and those of the lawyers in my practice Group have led to the creation of an extensive information database which will give me a head start when active litigation begins. Further, my firm has appeared in, and will efficiently pursue, any avenues of recovery against Cambridge in its current Chapter 7 bankruptcy, pending in the Southern District of New York.

3.   Present and Future Ability to Commit to Time-Consuming Litigation

I fully understand and appreciate the present and future nature of this time-consuming litigation, and am completely prepared to commit future time and resources to this litigation. As detailed above, since filing the first lawsuit against Facebook and Cambridge, I have committed substantial resources to researching, reviewing, and analyzing the pleadings filed in all related cases. My team has meticulously analyzed, categorized, and cataloged all news articles, and other sources of information relevant to this litigation, and transcribed testimony before Congress and testimony given to regulators abroad. These efforts are exemplary of the commitment I have to this case and will continue throughout the course of the litigation.

4.   Ability to Work Cooperatively with Others

My work in other MDLs as lead, co-lead, executive committee membership, and other leadership roles, as well as working with judges and the most accomplished attorneys in Florida through my

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leadership roles on The Florida Bar Board of Governors (elected from the 6th Judicial Circuit), Florida Bar Foundation (appointed by the Board of Governors), and the Board of Directors of the Florida Bar Examiners (appointed by The Florida Supreme Court), demonstrate my continuing commitment to work cooperatively.

5. <u>Resources Available to Prosecute this Litigation in a Timely Manner</u>

Morgan & Morgan is the largest plaintiffs law firm, employing over 400 attorneys and 2,000 support staff who serve consumers in 52 offices across 11 states. The Firm has the necessary financial resources and legal experience to equalize the playing field in pursuit of justice for its clients, and to prosecute this action to a successful conclusion. The 39 attorneys in the Group have the cumulative knowledge, skill, and experience necessary to effectively and efficiently litigate this matter. The Group is supported by experienced paralegals and former FBI agents who investigated cyber-crime during their FBI careers. The formidable resources of the Firm, combined with my pledge of time and energy, proven track record for working professionally and collaboratively with my peers, and my substantial privacy and data breach litigation experience, will allow me to serve, personally and actively, as lead counsel in this matter.

6. <u>Ability to Maintain Reasonable Fees and Expenses</u>

Through my leadership and committee membership in numerous MDLs, as well as pursuing technological advances in electronic discovery in MDLs and other complex litigation, I appreciate the fees, costs, and expenses necessary to efficiently and effectively litigate a case of this magnitude. While I pursue the best results for consumers in privacy and data breach class actions, I take this approach with costs in mind, having gained invaluable insight over my years of practice and involvement in the most complex and cost-intensive litigations.

<u>Conclusion</u>

My experience in MDL as well as my long time and extensive practice in privacy and data breach litigation, provides the knowledge, skills, and familiarity necessary to serve as Lead Counsel, and it would be my honor to serve in that capacity in this case. I have not sought the support for my application from any other lawyers as I believe my application should be considered on its own merits. I have worked collaboratively in leadership positons in data breach litigation with many of the other lawyers and firms appearing in this ligation, including Norm Siegel, Andy Friedman, Michael Sobol and Eric Gibbs, and if the Court decides to select another lawyer to lead the case, I would of course be willing to assist the lawyer selected in the advancement and protection of the privacy rights of the consumers in the putative class.

Respectfully submitted,

/s/ John A. Yanchunis
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